

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
(ATLANTA)

IN RE:

Kwuntina Carlita Conyers, Howard Edward
Conyers, Jr.

Debtor(s).

CASE NO. 23-58052-pwb
CHAPTER 13

Judge Paul W. Bonapfel

Progress Residential Borrower 18, LLC

Movant

CONTESTED MATTER

v.

Kwuntina Carlita Conyers, Howard Edward
Conyers, Jr., Debtor(s),
K. Edward Safir, Trustee

Respondents.

**PROGRESS RESIDENTIAL BORROWER 18, LLC'S
MOTION FOR RELIEF FROM AUTOMATIC STAY**

COMES NOW, Progress Residential Borrower 18, LLC (hereinafter "Movant"), a creditor and party in interest in the above-captioned case, by and through its undersigned counsel, and, pursuant to 11 U.S.C. § 362(d), moves the Court for an order lifting the automatic stay (hereinafter, the "Motion"), respectfully showing this honorable Court as follows:

1.

This is a Motion under Section 362(d) of the Bankruptcy Code for relief from the automatic stay for all purposes allowed by law and the contract between the parties including, but not limited to, the right to proceed with a Dispossessory Action.

2.

Kwuntina Carlita Conyers (a/k/a Kwuntina Harper) and Howard Edward Conyers, Jr. (hereinafter, "Debtor(s)") filed a voluntary petition for bankruptcy protection under Chapter 13

of the Bankruptcy Code on August 22, 2023, and are, therefore, subject to the jurisdiction of the Court.

3.

This Court has jurisdiction over this Motion pursuant to 11 U.S.C. §§ 362 and 363.

4.

Movant is a landlord/creditor pursuant to a Residential Lease Agreement dated August 4, 2022, at a rate of \$2,370.00 per month (hereinafter, the “Lease”). The Lease is executed by Kwuntina Harper and Howard Conyers, relative to certain property known as 494 Darbys Run Ct, Hiram, GA 30141, (hereinafter, the “Property”). A true and correct copy of the Lease is attached hereto as Exhibit “A” and incorporated herein by reference.

5.

Movant avers that, pursuant to the terms and conditions of the Lease, the Debtor(s) are currently in default under the terms of the Lease for non-payment of rent in the amount of \$15,549.17, including a post-filing default for failure to pay rent for the month(s) of September 2023.

6.

Movant further avers there is cause, including the lack of adequate protection, for granting Movant’s Motion for Relief from Automatic Stay. Furthermore, the stay should be lifted as the Debtor(s) do not have equity in the Property, and it is not necessary for an effective reorganization.

7.

Because the Lease so provides, the Debtor(s) are responsible for Movant’s reasonable attorney’s fees and expenses.

8.

Pursuant to 11 U.S.C. § 362(d), Movant is entitled to a termination of the automatic stay, with respect to its Property, since the lack of adequate protection exists.

9.

Movant requests that the provisions of Bankruptcy Rule 4001(a)(3) be waived and/or modified so as to allow Movant to proceed immediately with a dispossessory action in the applicable state Magistrate Court.

WHEREFORE, Movant PROGRESS RESIDENTIAL BORROWER 18, LLC prays for the following relief:

- (a) That this Court grant Movant's Motion for Relief From Stay;
- (b) That the automatic stay pursuant to § 362(d) of the Bankruptcy Code be terminated, annulled, modified, and lifted to permit Movant to pursue all remedies available under Georgia law to recover possession of the Property and to allow Movant to apply any security deposit held by Movant to any post-petition amounts which came due under the terms of the Lease, and that the property be abandoned as property of the estate;
- (c) That the Court waive and/or modify Bankruptcy Rule 4001(a)(3) so as to allow Movant to proceed immediately with a dispossessory action;
- (d) That the Court award Movant its attorney's fees and costs in bringing of this Motion; and
- (e) For such other and further relief as this Court deems just and equitable.

Respectfully submitted, this September 29, 2023.

THE TOTTEN FIRM, LLC
2090 Dunwoody Club Dr, Ste 106-33
Atlanta, GA 30350
(404) 692-4342 (Telephone)
mft@tottenfirm.com

/s/ Matthew F. Totten
MATTHEW F. TOTTEN
(Georgia Bar No. 798589)
ATTORNEY FOR MOVANT

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NOTICE OF HEARING

PLEASE TAKE NOTICE that **Movant Progress Residential Borrower 18, LLC** has filed a **Motion for Relief from Stay** and related papers with the Court in the above-referenced matter, seeking an order lifting the automatic stay as to certain real property located at 494 Darbys Run Ct, Hiram, GA 30141.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on **Motion for Relief From Stay at 10:15 A.M. (ET) on Wednesday, October 25, 2023** in Courtroom 1401, United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303, which may be attended in person or via the Court's Virtual Hearing Room. You may join the Virtual Hearing Room through the "Dial-in and Virtual Bankruptcy Hearing Information" link at the top of the homepage of the Court's website, www.ganb.uscourts.gov, or the link on the judge's webpage, which can also be found on the Court's website. Please also review the "Hearing Information" tab on the judge's webpage for further information about the hearing. You should be prepared to appear at the hearing via video, but you may leave your camera in the off position until the Court instructs otherwise. Unrepresented persons who do not have video capability may use the telephone dial-in information on the judge's webpage.

Your rights may be affected by the court's ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the court to grant the relief sought in these pleadings or if you want the court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file

a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk's Office is Clerk, U. S. Bankruptcy Court, Room 1340, 75 Ted Turner Drive SW, Atlanta, GA 30303. You must also mail a copy of your response to the undersigned at the address stated below.

If a hearing on the motion for relief from the automatic stay cannot be held within thirty (30) days, Movant waives the requirement for holding a preliminary hearing within thirty days of filing the motion and agrees to a hearing on the earliest possible date. Movant consents to the automatic stay remaining in effect until the Court orders otherwise.

Dated: September 29, 2023.

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mft@tottenfirm.com

/s/ Matthew F. Totten
MATTHEW F. TOTTEN
(Georgia Bar No. 798589)
ATTORNEY FOR MOVANT

CERTIFICATE OF SERVICE

This is to certify that, in accordance with BLR 5005-5 (Bankr. N.D. Ga.), I have this date electronically filed the within and foregoing *Notice of Hearing* in the above-captioned contested matter with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to all parties or counsel of record, and specifically, to counsel of record for the parties in interest in this matter:

Howard Jay Kent
The Kent Law Firm
Suite 600
3355 Lenox Road NE
Atlanta, GA 30326

K. Edward Safir
Standing Chapter 13 Trustee
Suite 1600
285 Peachtree Center Ave. NE
Atlanta, GA 30303

I have also on this day caused a copy of the pleading to be placed in the first-class United States mail, postage prepaid, addressed to the following recipients not participating in the CM/ECF system as follows:

Kwuntina Harper, *Debtor*
494 Darbys Run Ct
Hiram, GA 30141

Howard Conyers, *Debtor*
494 Darbys Run Ct
Hiram, GA 30141

Dated: September 29, 2023.

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